IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 870 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DIGVIJAYSINH BAPALAL ZALA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 870 of 1999

MR MJ PARIKH for Petitioner No. 1-2

MR BY MANKAD, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 02/08/2001

ORAL JUDGEMENT

The appellants-accused are son and mother respectively. They have challenged in this appeal, the judgement and order of conviction and sentence dated 12.8.1999 passed by the Additional City Sessions Judge, Court No.13, Ahmedabad in Sessions Case No. 174 of 1996, whereby he found both the appellants accused guilty for the offence under Sections 306 and 498A IPC. The learned

Judge convicted and sentenced both the appellants accused to suffer RI for 7 years and to pay fine of Rs. 1,000, in default to further undergo 3 months SI for the offence under Section 306 IPC. The appellants-accused were also convicted and sentenced to suffer 18 months RI and to pay a fine of Rs. 500/-, in default to further undergo one month SI for the offence under Section 498A IPC. Both the substantive sentences were ordered to run concurrently.

2. Pratiksha wife of accused-appellant No.1 Digvijaysinh Bapalal Zala committed suicide on 11.5.1995 at early morning hours of 6.30 A.M in her house after her husband left for his job. Exact date of their marriage is not coming up on the record, but it has come in evidence of the prosecution witnesses that about 5 months prior to the incident, they got married. It was a case of hundred percent burns. When she was brought to the hospital, she was able to speak, therefore, her dying declaration (Ex.19) was recorded and duly signed by the doctor on that very day i.e. 11.5.1995 at 8.20 A.M. As per the dying declaration of deceased Pratiksha, she committed suicide because of the demand of dowry made by her mother-in-law i.e. present appellant accused No.2, since last five months of the incident. Accordingly, FIR (Ex.18) was lodged by PSI Laltaprasad on that very day on 11.5.1995 against the accused appellant No.2 for the offence under Sections 498A and 306 IPC. Thereafter, the Police recorded statement of Mahendrasinh, father of deceased Pratiksha, P.W.1, Ex.9 and a case was also registered against accused appellant No.1 Digvijaysinh Bapalal Zala, husband of deceased Pratiksha.

3. To prove its case, prosecution examined following witnesses:-

(1) Mahendrasinh, father of deceased Pratiksha, P.W.1, Ex.9,

(2) Anil Patel, P.W 2, Ex.10,

(3) Ashok Acharya (panch witness of scene of offence), P.W 3, Ex.13,

(4) PSI Laltaprasad, who recorded the dying declaration of the deceased, P.W 4, Ex.16,

(5) Harish Dhobhi (neighbour) P.W 5, Ex.24,

(6) Umakant Upadhyaya (hand-writing expert) P.W.6, Ex.31,

(7) Ravindrasing Gheesing (officer from FSL), P.W 7, Ex.38,

(8) Natvarsing Parmar (the then Assistant Police Commissioner, who investigated the case), P.W 8 Ex.41 and

(9) Dr.Jaidev Chudasma, P.W.9, Ex.49.

4. In addition to the aforesaid oral evidence of the prosecution witnesses, the following documentary evidences were also produced and proved.

(1) Vardhi report, Ex.17,

(2) FIR at Ex.18,

(3) Dying declaration at Ex.19,

(4) Letters alleged to have been written by deceased Pratiksha at Ex.36,

(5) P.M. Notes at Ex.40 and

(6) Medical case papers of deceased Pratiksha Ex.50.

5. After considering the oral as well as documentary evidence led by the prosecution, the learned Judge was of the opinion that the prosecution proved its case against both the appellants accused beyond reasonable doubt. Therefore, by impugned judgement and order, he convicted the accused for the offences and sentenced them as stated earlier. The same is challenged in this appeal by both the appellants accused.

6. At the time of admission of this appeal, the learned Counsel for the appellants accused had not pressed the bail for both the appellants. Therefore, prayer for bail was not granted. However, their appeal was ordered to be expedited and fixed it for hearing in 3rd week of January, 2000. But due to one or the other reason, it could not be heard and disposed of till today.

7. It is stated at the bar by learned Counsel Shri Parikh for the appellants accused that subsequently, both the appellants accused filed bail application and they are released on bail on 26th April, 2000.

8. Learned Counsel Shri Parikh for the appellants accused could not seriously press this appeal qua

appellant accused No.2 Sajjanba Bapalal Zala because there is voluminous oral as well as documentary evidences against her. Once this Court comes to the conclusion that at the time of making her dying declaration deceased Pratiksha was conscious and was able to speak, then without any hesitation her dying declaration can be accepted by the Court. In the instant case, Dr.Jaidev Chudasma, P.W 9, Ex.49 has in terms stated that deceased was conscious when she made her dying declaration in his presence. Dying declaration Ex.19 is duly proved in the evidence of PSI Laltaprasad P.W4 Ex.16. It is a brief dying declaration wherein deceased Pratiksha has clearly stated that because of consistent demand of dowry from her mother-in-law, she committed suicide. Dying declaration made by the deceased is sufficient to convict the appellant accused No.2 for the offence under Section 498A and 306 IPC. If any other evidence is required, then there is an oral evidence of Mahendrasing, father of deceased Pratiksha at Ex.9. He has clearly stated that his daughter was constantly harassed and tortured by her mother-in-law Sajjanba because of demand of dowry. His evidence is not at all shaken in his cross-examination. In addition to it, there are letters at Ex.36 alleged to have been written by deceased Pratiksha. However, I am not inclined to give much importance to it, though hand-writing expert is examined in this case to prove those letters.

9. In view of the above, I am of the considered opinion that the appeal filed by the appellant accused No.2 Sajjanba Bapalal Zala is required to be dismissed.

10. However, there is a lot of substance in the submission made by Mr. Parikh, learned Counsel for the appellant accused No.1 - Digvijaysinh Bapalal Zala, husband of deceased Pratiksha as there is no evidence to convict accused No.1 Digvijaysinh. Dying declaration Ex.19 clearly shows that deceased Pratiksha had not mentioned anything against accused appellant No.1. However, learned APP Shri Mankad has tried to place reliance upon the letters Ex.36 addressed by the deceased Pratiksha to her parents. According to him the letters were sufficient to involve the accused appellant No.1 also. Evidence of hand-writing expert is a weak piece of evidence and it is difficult to convict a person on the sole testimony of the hand-writing expert. That apart, the contents of those letters produced at Ex.36 also do not involve the appellant accused No.1. This has become clear from the evidence of Mahendrasing, P.W.1, father of deceased. He has also not tried to falsely involve his son-in-law. However, in appears from the judgement of

the learned Judge that he was very much impressed by the letters at Ex.36 alleged to have been written by deceased Pratiksha. At the cost of repetition, I may state that those letters do not suggest anything serious against the accused appellant No.1. In that view of the matter, the judgement and order of conviction passed by the learned trial Judge convicting the appellant accused No.1 for the offence under Sections 306 and 498A IPC is required to be quashed and set aside.

11. Appeal qua appellant accused No.1 - Digvijaysinh Bapalal Zala is required to be allowed and accordingly it is allowed. The judgement and order of conviction and sentence passed by the learned Additional City Sessions Judge, Court No. 13, Ahmedabad in Sessions Case No. 174 of 1996 convicting the accused appellant No.1 Digvijaysinh Bapalal Zala for the offence under Sections 306 and 498A IPC is hereby quashed and set aside. Fine if paid by the appellant No.1 shall be refunded to him forthwith.

12. The appeal against the judgement and order of conviction and sentence passed by the learned Additional City Sessions Judge, Court No. 13, Ahmedabad qua accused appellant No.2 - Sajjanba Bapalal Zala is dismissed. She is presently on bail. Therefore, she has to surrender and undergo the remaining sentence. She is given 8 weeks time to surrender.

Bail bonds of both the appellants accused stand cancelled.

(B.J.Shethna, J.)
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